

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOHN E. CLARK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:09-CV-02021-KJD-GWF

**ORDER**

Currently before the Court is Defendant's Motion to Dismiss (#12). In response, Plaintiff filed two Motions to Extend Time (##14, 17) which were both granted. (See ##16,19). The Government filed Responses of non-opposition to the Motions to Extend Time (see ##15, 18).

Per its Orders granting extensions of time, (##17, 19), the Court specifically allowed Plaintiff additional time in which to provide an affidavit of merit as required under Nevada law. The Court cautioned Plaintiff that his "failure to do so [would] result in dismissal of the action." (#17). The Court's second Order granting extension of time allowed Plaintiff until November 16, 2010, in which to provide the required affidavit of merit, and again cautioned Plaintiff that his "failure to do so [would] result in dismissal of the action." (See #19). To date, Plaintiff has failed to provide an affidavit of merit as required.

1 Plaintiff's pro se complaint brings one claim of medical malpractice against the United States  
2 of America under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, et seq, alleging that the  
3 Veteran Affairs medical providers at the Southern Nevada System together with East Orange  
4 Veterans Affairs Medical Center in New Jersey, failed to diagnose and heal a left hip fracture and  
5 post-traumatic hip osteoarthritis.

6 Claims brought pursuant to the Federal Tort Claims Act are governed by the substantive law  
7 of the state where the claim arose. The substantive law that applies to this action is N.R.S. §  
8 47A.071, which requires a district court to dismiss an action without prejudice if the action is filed  
9 without an affidavit of merit. Here, it is undisputed that in spite of the Court's admonitions, Plaintiff  
10 has failed to file an affidavit of merit as required under N.R.S. § 47A.071.

11 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (#12) is  
12 **GRANTED**, without prejudice.

13 DATED this 17th day of March, 2011.

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16 Kent J. Dawson  
17 United States District Judge  
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